

The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. See 86 Ill. Adm. Code 140.101. (This is a GIL).

June 30, 2000

Dear Xxxxx:

This letter is in response to your letter dated June 12, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

This correspondence is to seek your determination regarding the sales and/or rental taxation of certain charges made by COMPANY to its customers. COMPANY is in the business of providing short-term motor vehicle rentals (less than one year) and long-term motor vehicle leases (greater than one year). There are occasions when COMPANY will perform repair services on non-COMPANY owned vehicles for our customers.

As it relates to these repair services, we would like to know if these items are subject to sales and/or rental tax. The following separate charges can be billed to a customer when repairing a motor vehicle:

Labor charges performed by COMPANY mechanics.

Labor charges billed to COMPANY by an outside company to repair a customer's vehicle.

Parts, tires, etc. from COMPANY's inventory.

Parts, tires, etc. billed to COMPANY by an outside company to repair a customer's vehicle.

Towing Charges for COMPANY to Tow a vehicle or billed to COMPANY by an outside company.

Mileage Charges for service truck miles.

EPA Surcharge incurred by COMPANY.

Disposal of used oil, filters, etc.

Charges for COMPANY cost of miscellaneous shop supplies.

I would appreciate your comment on whether these recoverable, separately billed charges are subject to sales tax and/or rental tax.

Please feel free to call me with any questions at ####.

LEASES

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See the enclosed copy of 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Rental charges for a sublease are also not subject to tax in Illinois. Consequently, lessees incur no tax liability.

Please note that Under Illinois law, lessors may not "pass through" their tax obligation on to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq. The Automobile Renting Occupation and Use Tax Act imposes a tax upon persons engaged in this State in the business of renting automobiles in Illinois under lease terms of one year or less at the rate of 5% of the gross receipts from such business. See the enclosed copy of 86 Ill. Adm. Code 180.101. Subsection (b) of Section 180.101 defines the term "automobile" for purposes of the Act and does not include commercial trucks, tractors, or trailers. Lessors of these types of vehicles are subject to Use Tax liability as discussed above.

REPAIRS

Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

Under the Service Occupation Tax Act, businesses providing services (i.e. servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See the enclosed copy of 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. The servicemen may calculate their tax base in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. They collect a corresponding amount of Service Use Tax from their service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers.

In multi-service situations, a primary serviceman's cost price is determined either by the separately stated selling price of the tangible personal property transferred from a secondary serviceman, or if the secondary serviceman does not separately state the cost of goods, it is presumed that the primary serviceman's cost price is 50% of the secondary serviceman's total charge. See 86 Ill. Adm. Code 140.301, enclosed. When both primary servicemen and secondary servicemen are

registered, primary servicemen may give a Certificate of Resale to registered secondary servicemen for any tangible personal property purchased. Primary servicemen then collect Service Use Tax from their customers.

Since August 14, 1996, if an unregistered de minimis serviceman subcontracts service work to an unregistered de minimis secondary serviceman, the primary serviceman does not incur a Use Tax liability if the secondary serviceman (i) has paid or will pay Use Tax on his or her cost price of any tangible personal property transferred to the primary serviceman and (ii) certifies that fact in writing to the primary serviceman.

Regarding the labor and parts referenced in your letter, the taxability of the charges for those items will depend on what tax base is chosen. Your letter states that those charges are separately billed. Therefore, your company would not be using the second method (50% of entire bill) for calculating its tax liability described above. If the charges for towing, mileage, disposal of used items, and any reimbursements for EPA surcharges or shop supplies are separately stated on the customers' billings, those charges would generally not be subject to tax (assuming that your company utilizes the first method described above, i.e., it remits Service Occupation Tax on the separately stated selling price of tangible personal property transferred incident to service). Please note that any supplies used by your company, such as shop supplies, that are not transferred to repair customers will be subject to Illinois Use Tax on the cost price of those items. See 86 Ill. Adm. Code 150.101, enclosed.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.